

Article 23 – Criminal Record Check of Direct Care Staff

AN ACT TO AMEND CHAPTER 7, TITLE 44, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO HOSPITALS, TUBERCULOSIS CAMPS, AND HEALTH SERVICES DISTRICTS, BY ADDING **ARTICLE 23** SO AS TO REQUIRE CRIMINAL RECORD CHECKS OF DIRECT CAREGIVERS EMPLOYED BY NURSING HOMES, ADULT DAYCARE FACILITIES, HOME HEALTH AGENCIES, AND COMMUNITY RESIDENTIAL CARE FACILITIES; TO PROVIDE FOR TEMPORARY EMPLOYMENT PENDING THE RESULTS OF THE CRIMINAL RECORD CHECK; TO PROVIDE THAT A RECORD CHECK IS VALID UNLESS THE PERSON DISCONTINUES EMPLOYMENT IN A DIRECT CARE SETTING FOR A YEAR OR LONGER; TO AUTHORIZE DIRECT CARE ENTITIES TO FURNISH DIRECT CAREGIVER PERSONNEL INFORMATION TO OTHER ENTITIES; TO REQUIRE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL TO VERIFY COMPLIANCE WITH THIS ARTICLE BEFORE RENEWING THE LICENSE OF A DIRECT CARE ENTITY; TO PROVIDE PENALTIES; AND TO REQUIRE DIRECT CARE ENTITIES TO CONDUCT CRIMINAL RECORD CHECKS ON DIRECT CAREGIVERS EMPLOYED ON JULY 1, 2002.

Be it enacted by the General Assembly of the State of South Carolina:

Criminal record checks required for direct caregivers

SECTION 1. Chapter 7, Title 44 of the 1976 Code is amended by adding:

"ARTICLE 23 Criminal Record Checks of Direct Care Staff

Section 44-7-2910. (A) No direct care entity may employ or contract with a direct caregiver until after the direct caregiver has undergone a criminal record check as provided in this section. However, pending the results of the criminal record check, a person temporarily may be employed or may contract as a direct caregiver with a direct care entity. A direct care entity may consider the information revealed by a criminal record check as a factor in evaluating a direct caregiver's application to be employed by or contract with the entity.

(B) For purposes of this article:

(1) 'Direct care entity' means:

- (a) a nursing home, as defined in Section 44-7-130;
- (b) a daycare facility for adults, as defined in Section 44-7-130;
- (c) a home health agency, as defined in Section 44-69-20;
- (d) a community residential care facility, as defined in Section 44-7-130;

(2) 'Direct caregiver' or 'caregiver' means:

- (a) a registered nurse, licensed practical nurse, or certified nurse assistant;
- (b) any other licensed professional employed by or contracting with a direct care entity who provides to patients or clients direct care or services and includes, but is not limited to, a physical, speech, occupational, or respiratory care therapist;
- (c) a person who is not licensed but provides physical assistance or care to a patient or client served by a direct care entity;
- (d) a person employed by or under contract with a direct care entity who works within any building housing patients or clients;
- (e) a person employed by or under contract with by a direct care entity whose duties include the possibility of patient or client contact; or
- (f) a faculty member or student enrolled in an educational program, including clinical study in a direct care entity.

(C)(1) A direct caregiver applicant shall provide verification of residency for the twelve months preceding the date of the employment application. The direct care entity shall conduct a state criminal record check if the applicant has resided in South Carolina during that twelve-month period and can verify residency through:

- (a) a driver's license or identification card issued by the State of South Carolina;
- (b) rent, mortgage, or utility receipts in the applicant's name for a home within South Carolina;
- (c) pay stubs in the applicant's name from a business located in South Carolina; or
- (d) bank records in the applicant's name showing a deposit or checking account held in a South Carolina branch office of a bank.

(2) A direct care entity unable to verify South Carolina residency for a direct care applicant for the preceding twelve months shall conduct a federal criminal record check on the applicant in addition to the state criminal record check. However, if the direct care entity is located in a county of this State that borders either North Carolina or Georgia and the direct care applicant can verify residency in North Carolina or Georgia for the twelve months preceding the date of the employment application through the same means enumerated in (C)(1)(a) through (d), the direct care entity shall conduct only a state criminal record check in the applicant's resident state.

Section 44-7-2920. Criminal record checks required pursuant to this article must be conducted by the State Law Enforcement Division or by a private business, organization, or association which conducts background checks if that entity utilizes current criminal records obtained from the State Law Enforcement Division or the Federal Bureau of Investigation to determine any criminal record. An applicant shall submit with the application one complete set of the applicant's fingerprints on forms specified or furnished by the State Law Enforcement Division.

Fingerprint cards submitted to the State Law Enforcement Division pursuant to this section must be used to facilitate a national criminal record check, as required by this section. Pending the results of the criminal record check, a person temporarily may be employed or contract with a direct care entity. The criminal record check is not required to be repeated as long as the person remains employed by or continues to contract with a direct care entity; however, if a person is not employed by or is not under contract for one year or longer with a direct care entity, the criminal record check must be repeated before resuming employment or contracting with a direct care entity. The fee charged by the Federal Bureau of Investigation, if any, for the fingerprint review must be paid by the individual direct caregiver or the direct care entity.

Section 44-7-2930. A direct care entity may furnish copies of personnel records of current or former direct caregivers to another direct care entity requesting this information. Information contained in the records may include, but is not limited to, disciplinary matters and any reasons for termination. A direct care entity releasing these records pursuant to this section is presumed to be acting in good faith and is immune from civil and criminal liability which otherwise may result by reason of releasing this information. A direct care entity receiving records pursuant to this section shall conduct its own criminal record check pursuant to this article.

Section 44-7-2940. The Department of Health and Environmental Control shall verify that a direct care entity is conducting criminal record checks as required in this article before the department issues a renewal license for the direct care entity. The department shall act as the channeling agency for any federal criminal record checks required by this article.

Section 44-7-2950. An individual who violates this article, or a regulation promulgated pursuant to this article, is subject to a civil fine of one hundred dollars for the first violation and five hundred dollars for each subsequent violation. A fine imposed pursuant to this section must be paid before a direct care entity's license is renewed. Fines collected pursuant to this section must be retained by the department to help offset the costs associated with carrying out the department's responsibilities under this article."

Criminal record checks required within twelve months for direct caregivers employed on act's effective date

SECTION 2. Within twelve months of the effective date of this act, a direct care entity shall conduct criminal record checks, as provided for in **Article 23**, Chapter 7, Title 44 of the 1976 Code, as added by Section 1 of this act, on all direct caregivers employed by or under contract with the direct care entity as of that date.

Time effective

SECTION 3. This act takes effect July 1, 2002.

Ratified the 8th day of May, 2002.

Approved the 14th day of May, 2002.